



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/554,163

10/21/2005

Vladislav Krizik

36540

6589

23589 7590 01/28/2008
HOVEY WILLIAMS LLP
10801 Mastin Blvd., Suite 1000
Overland Park, KS 66210

EXAMINER

VERDIER, CHRISTOPHER M

ART UNIT

PAPER NUMBER

3745

MAIL DATE

DELIVERY MODE

01/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/554,163

Applicant(s)

KRIZIK ET AL.

Examiner

Christopher Verdier

Art Unit

3745

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2007 and 13 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10-21-05, 11-9-07 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's amendments dated November 9, 2007 and November 13, 2007 have been carefully considered but are non-persuasive. The new declaration filed November 13, 2007 is appreciated, but is defective for the reason below. New figure 9 is acceptable to the examiner. The Substitute Specification of November 9, 2007 has not been entered because it contains new matter as set forth later below. Additionally, the Substitute Specification does not contain the Preliminary Amendment of October 21, 2005 made to page 1, line 8.

Applicant's arguments that the claims define over Erlach 4,950,130 and Richardson 1,579,146, because neither of these references disclose water wheels with isobaric paddles, are not persuasive for the reasons set forth below concerning the Rule 1.132 Declaration.

Declaration under 37 CFR 1.132

The Declaration under 37 CFR 1.132 filed November 9, 2007 is insufficient to overcome the rejection of claims 1-4 under 35 USC 102(b) as being anticipated by Erlach 4,950,130 and Richardson 1,579,146 as set forth in the last Office action. The Declaration arguments are that the claims of the instant application recite a water wheel, while Erlach and Richardson disclose water turbines, that these are different pieces of equipment as would be recognized by those of ordinary skill in the art, because a water turbine transforms the kinetic water energy to mechanical energy of the rotor which occurs inside the housing of the turbine by changing the direction of the water flow by a combination of the turbine paddles and the housing of the turbine, that the housing of the water turbine is an essential part of the turbine structure in order to reach the required operational parameters and water turbines are intended for large water

heads and high rotational speeds, while water wheels do not use this effect, but are designed for use with relatively small water heads, are low-speed, and do not require a housing to enclose the area where they rotate. The Declaration arguments are also that paddles of a water wheel are immersed into flowing water, by which flow of water against the paddles the energy is transferred to the paddles and the wheel, that it has generally been understood by those skilled in the art that water wheels cannot be effectively provided with isobaric paddles as may be used in a Pelton turbine, because a water wheel is designed for low-speed operation and does not have a housing, and as a result, water turbines were required in order to generate larger quantities of energy when compared to a water wheel of the same size. These arguments are not persuasive. During patent examination, claims are given the broadest reasonable interpretation consistent with the specification. See *In re Morris*, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). The Pelton turbine of Erlach and the water motor of Richardson are both broadly considered to be water wheels, since they are driven by water. By definition, a Pelton turbine and a water motor contain a water wheel, since they are driven by water. Applicant's above definitions of a water motor and a water wheel are narrow definitions. As set forth above, patent claims are to be given their broadest reasonable interpretation consistent with the specification.

The Declaration arguments that neither Erlach nor Richardson teach or suggest the use of isobaric paddles, since an isobaric paddle is configured in such a way that water flows onto the paddle only from one side of the paddle surface and that the shape of the paddle changes the direction of its speed vector in a direction as close as possible to 180 degrees from the original water flow direction, and the reference to the figure illustrating the manner by which an isobaric

paddle changes the direction of water flow, have been carefully considered but are non-persuasive. The respective paddles 2, 23 of Erlach and Richardson are broadly considered to be isobaric, since they are entirely symmetrical about axes of symmetry, such symmetry resulting in the paddles being isobaric.

The declaration contains an allegation of an unexpected result by virtue of the isobaric paddles, but does not contain any objective evidence or comparative data. However, as set forth above, the respective paddles 2, 23 of Erlach and Richardson are broadly considered to be isobaric.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence fails to outweigh the evidence of anticipation.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Rather, it refers to 37 CFR 1.56(a), which is not proper.

Specification

The substitute specification filed November 9, 2007 has not been entered because it contains new matter. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. Page 22, lines 2-5 state that the embodiment of figure 2 may be vertical or oblique as to the rotation axis. This is new matter because figure 2 does not contain these features. Other figures contain these features, but not figure 2. Additionally, the statement that the embodiment of figure 2 may have a transmission that is a gearbox or belt transmission, adds new matter. Finally, the Substitute Specification does not contain the Preliminary Amendment of October 21, 2005 made to page 1, line 8.

The specification is objected to because it is replete with grammatical errors too numerous to mention in all instances. The following are several examples of defects. The specification should be carefully proofread for additional defects. Appropriate correction is required.

On page 1, line 1, "." should be deleted.

On page 1, line 7, "presence" should be changed to -- present --.

On page 1, line 7, "the" (second occurrence) should be deleted

On page 1, line 7, "equipments" should be changed to -- equipment --.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Erlach 4,950,130. Disclosed is a water wheel motor comprising a water wheel 1 having an axis of rotation near 4, an outlet device 6 located in front of the wheel, a drain device 3/10 located under the wheel, the wheel mounted for rotation on the rotation axis, the wheel having fixed thereon paddles 2 which are isobaric, all points of the wheel and paddles positioned for travel through a plane which is no lower than a plane limiting the upper level of water 10 within a drain device space containing water, the outlet device having an axis along which water flowing through the outlet device flows, the axis directed on the paddles, and the rotation axis oriented in a horizontal position.

Claims 1-4 are also rejected under 35 U.S.C. 102(b) as being anticipated by Richardson 1,579,146. Disclosed is a water wheel motor comprising a water wheel 20 having an axis of rotation near 14, an outlet device 29 located in front of the wheel, a drain device 10/12 located under the wheel, the wheel mounted for rotation on the rotation axis, the wheel having fixed thereon paddles 23 which are isobaric, all points of the wheel and paddles positioned for travel through a plane which is no lower than a plane limiting the upper level of water within a drain device space containing water, the outlet device having an axis along which water flowing

through the outlet device flows, the axis directed on the paddles, and the rotation axis oriented in a vertical position.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Howard, Papadakis, Banki, and Davidson were previously cited to show various water wheel motors with isobaric paddles. These references could also have been applied as they anticipate at least claim 1 under 35 U.S.C. 102, but are not applied at this time in order to avoid multiple rejections.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Application/Control Number:
10/554,163
Art Unit: 3745

Page 8

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Verdier whose telephone number is (571) 272-4824. The examiner can normally be reached on Monday-Friday from 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward K. Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

C.V.
January 18, 2008



Christopher Verdier
Primary Examiner
Art Unit 3745